

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, LOUIS
BISIGNANO, MICHAEL O'TOOLE,
MICHAEL C. BOURGAL, DARIN
JEFFERS, JOSEPH A. FERRARA, SR.,
FRANK H. FINKEL, MARC HERBST,
DENISE RICHARDSON, THOMAS F.
CORBETT, *as Trustees and Fiduciaries
of the Local 282 Pension Trust Fund,*

MEMORANDUM AND ORDER

Case No. 18-CV-3773 (FB) (SJB)

Plaintiff,

-against-

D. GANGI CONTRACTING CORP.,
JOHN DOE COMPANIES 1-99,

Defendants.

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BLOCK, Senior District Judge:

Magistrate Judge Bulsara issued a Report an Recommendation (“R&R”) recommending that a default judgment be entered against defendant D. Gangi Contracting Corp. (“D. Gangi”) in the amount of \$82,850.65¹ plus \$31.56 per day from July 26, 2018 through date of payment. The R&R also recommended that

¹ This amount consists of (1) \$64,002.00 in ERISA withdrawal liability; (2) \$1,511.25 in interest on the withdrawal liability for the period ranging from April 1, 2018 through July 25, 2018; (3) \$12,800.40 in liquidated damages, (4) \$4,097.00 in attorney’s fees; and (5) \$440.00 in costs. *See* R&R at 23.

defendants John Doe Companies 1–99 be dismissed without prejudice. The R&R advised that objections were due within 14 days of service and warned that “[f]ailure to file objections within the specified time may waive the right to appeal any judgment or order by the District Court in reliance on this Report and Recommendation.” R&R at 23–24. The R&R was served on D. Gangi at its last known address on February 12, 2019, making objections due by February 26, 2019. To date, no objections have been filed.

Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will, however, excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. Accordingly, the Clerk shall enter judgment in accordance with the R&R. The total amount of the judgment shall be calculated as described above. There shall be no additional

postjudgment interest other than the \$31.56 that accrues daily until the date of payment.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
March 11, 2019